

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2012-19 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2012-19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-CHX-2012-19 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68650; File No. SR-FINRA-2013-001]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Cross-References and Make Other Non-Substantive Changes Within FINRA Rules and By-Laws

January 14, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 3, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update cross-references and make other non-substantive changes within certain FINRA rules and By-Laws, primarily as the result of approval of new consolidated FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal

office of FINRA and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

FINRA is in the process of developing a consolidated rulebook ("Consolidated FINRA Rulebook").<sup>5</sup> That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive changes in the Consolidated FINRA Rulebook.

The proposed rule change would make several such changes, as well as certain other non-substantive changes unrelated to the adoption of rules in the Consolidated FINRA Rulebook. First, the proposed rule change would update rule cross-references and make other non-substantive changes to reflect the adoption of new consolidated FINRA communications with the public rules. On March 29, 2012, the SEC approved a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-3 through 2210-8 as FINRA Rules 2210 and 2212 through 2216, with several

<sup>5</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

changes.<sup>6</sup> The new rules will be implemented on February 4, 2013. As such, the proposed rule change would update references to the new rule numbers in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities), 2111 (Suitability), 2220 (Options Communications), 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities), 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)), 9551 (Failure to Comply with Public Communication Standards) and 9610 (Application).

Second, the proposed rule change similarly would update the rule references in FINRA Rules 2214 (Requirements for the Use of Investment Analysis Tools) and 9610 as the result of adoption of new consolidated FINRA Rules 2111 (Suitability) and 5123 (Private Placement of Securities), respectively.<sup>7</sup>

Third, the proposed rule change would make additional non-substantive changes as a result of new definitions in FINRA Rule 2210.<sup>8</sup> That rule combines the current definitions of “sales literature,” “advertisement” and “independently prepared reprint” into a single category of “retail communications.” Accordingly, the proposed rule change makes corresponding changes in the rulebook where the current terms are used: Section 13, Schedule A to the FINRA By-Laws (Review Charge for Communications Filed or Submitted), FINRA Rules 2130 (Approval Procedures for Day-Trading Accounts), 2220 (Options Communications),<sup>9</sup> 2270

(Day-Trading Risk Disclosure Statement), 3160 (Networking Arrangements Between Members and Financial Institutions) and NASD Rule 3010 (Supervision).<sup>10</sup>

Fourth, the proposed rule change would make technical changes to FINRA Rules 2210 (Communications with the Public) and 4210 (Margin Requirements) to reflect FINRA Manual style convention changes and FINRA Rule 3230 (Telemarketing) to reflect changes adopted in a recent FINRA proposed rule change regarding telemarketing.<sup>11</sup>

Finally, FINRA is proposing to make non-substantive changes to certain other rules. FINRA is proposing to delete paragraph (c) (Aggregate Volume Match) of FINRA Rules 7240A and 7340 (Trade Report Processing) relating to the FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF”) and OTC Reporting Facility (“ORF”), respectively. The aggregate volume match functionality was eliminated when the facilities were migrated to a new operating platform in 2007, but the rules were inadvertently not updated to reflect the system changes. In addition, FINRA is proposing to re-designate paragraph (d) of FINRA Rules 7240A and 7340 as paragraph (c), and to replace the reference to 5:15 p.m. with 8:00 p.m. in this paragraph. The reference to 5:15 p.m. was inadvertently not amended when the system closing time for the FINRA/Nasdaq TRF and

proposed change to Rule 2210(b) does not substantively change the scope of options communications that would require principal approval.

<sup>10</sup> FINRA Rules 2130 and 2270 impose approval procedures and disclosure requirements, respectively, on a member that is “promoting a day-trading strategy.” For purposes of the rules, a member shall be deemed to be “promoting a day trading strategy” if “\* \* \* it affirmatively endorses a ‘day trading strategy,’ as defined in [the Rules] through advertising, its Web site, trading seminars or direct outreach programs. For example, a member generally shall be deemed to be ‘promoting a day-trading strategy’ if its advertisements address the benefits of day trading, rapid fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader.” The proposed rule change would change “advertisements” in the example provided to “retail communications.” FINRA believes that any member that currently uses sales literature or independently prepared reprints to promote day trading would be subject to the existing rule, and thus the change would not expand the scope of the rule. In addition, Rules 2130 and 2270 both provide that members may submit advertisements to FINRA’s Advertising Department for guidance on whether the content constitutes “promoting a day-trading strategy.” FINRA believes it consistent with the changes to the communications with the public rules to allow members to now submit “retail communications” for such guidance.

<sup>11</sup> See Securities Exchange Act Release No. 66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (Order Approving File No. SR-FINRA-2011-059).

ORF was extended to 8:00 p.m. in 2006.<sup>12</sup>

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be February 4, 2013.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>13</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA’s rules.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

<sup>12</sup> See Securities Exchange Act Release No. 54772 (November 17, 2006), 71 FR 68665 (November 27, 2006) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2006-120).

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR-FINRA-2011-035).

<sup>7</sup> See Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR-FINRA-2010-039); and Securities Exchange Act Release No. 67157 (June 7, 2012), 77 FR 35457 (June 13, 2012) (Order Approving File No. SR-FINRA-2011-057).

<sup>8</sup> See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR-FINRA-2011-035).

<sup>9</sup> New FINRA Rule 2210(a)(2) defines “correspondence” as any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period. The proposed change to Rule 2220(b) would delete the requirement for principal approval for correspondence that is distributed to 25 or more existing retail customers within a 30 calendar-day period that makes any financial or investment recommendation or otherwise promotes the product or service of a member. Under the new communications with the public rule, communications distributed to more than 25 retail investors within any 30 calendar-day period that include such recommendations or promotions would be considered retail communications and therefore subject to the principal approval requirement. As such, the

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-001 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and

copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2013-001 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68648; File No. SR-Phlx-2013-02]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce the Fees Assessed for Certain Co-location Services

January 14, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 2013, NASDAQ OMX PHLX LLC ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to reduce the fees assessed under Section X(a) of the PHLX Fee Schedule for certain co-location services. PHLX is proposing that the implementation date of the proposed rule change will be January 2,

2013. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com>, at PHLX's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Section X(a) of the PHLX Fee Schedule to reduce the monthly recurring cabinet ("MRC") fees assessed for the installation of certain new co-location cabinets. The reduced MRC fees will apply to new cabinets ordered by customers using the CoLo Console<sup>3</sup> during the months of January and February of 2013, provided that such cabinets are fully operational by May 31, 2013. The reduced fee shall apply to any cabinet that increases the number of dedicated cabinets beyond the total number dedicated to that customer as of December 31, 2012 ("Baseline Number"), for so long as the total number of dedicated cabinets exceeds that customer's Baseline Number. The reduced MRC fees will apply for a period of 24 months from the date the new cabinet becomes fully operational under Phlx rules, provided that the customer's total number of cabinets continues to exceed the Baseline Number.

The Exchange proposes to reduce the applicable fees as follows:

Cabinet type	Current ongoing monthly fee	Reduced ongoing monthly fee
Low Density .....	\$4,000	\$2,000
Medium Density .....	5,000	2,500
Medium-High Density .....	6,000	3,500

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The "CoLo Console" is Phlx's web-based ordering tool, and it is the exclusive means for ordering colocation services.